



RAG American Coal Holding, Inc.

March 26, 2001

Ms. Elizabeth Montgomery  
Department of Interior  
Minerals Management Service  
Mail Stop 4230  
1849 C Street NW  
Washington, DC 20240

Re: Comments on Review of Existing Regulations

Dear Ms. Montgomery:

On December 26, 2000, the Department of Interior ("DOI") requested comments on their Minerals Management Service's ("MMS") regulations that should be eliminated or revised because they are obsolete, ineffective or burdensome. (65 Fed. Reg. 81465) The comment period was extended until March 28, 2001 on February 23, 2000. (66 Fed. Reg. 11241) This letter provides RAG American Coal Holding, Inc.'s ("RAG") comments on the existing rules. RAG's subsidiaries hold federal coal leases in the states of Colorado, Utah and Wyoming.

In 1995, the DOI established the Royalty Policy Committee ("RPC") under the Minerals Management Advisory Board. The RPC was created to give advice related to the performance of discretionary functions involved in the DOI's management of Federal and Indian mineral leases and revenues representing the collective viewpoint of the states, Indians, industry and other parties to the Secretary of the Interior through the MMS. The Committee reviews and comments on revenue management and other mineral related policies and provides a sounding board to convey views representative of mineral lessees, operators, revenue payors, recipients, governmental agencies and the interested public.

The RPC's Charter allows the Committee to establish subcommittees to study issues in-depth and to develop recommendations for consideration by the full Committee. Subcommittee membership will be balanced in terms of points of view, function to be performed and expertise required by the subcommittee. Subcommittees may include individuals who are not members of the RPC.

The RPC created an Appeals and ADR Subcommittee to make recommendations to the RPC to improve the processes involving appeals and alternative dispute resolution. Membership in the Subcommittee included state, Indian and industry representatives, as well as the participation of several other persons as non-voting members and two employees of MMS as staff to the Subcommittee. In February 1997, the Subcommittee submitted a consensus report to the RPC for their consideration.

In March 1997, the RPC approved the Subcommittee report and forwarded it to Secretary Babbitt for his consideration. The approved Subcommittee report included a number of specific steps involving both the appeals and ADR processes, being incorporated into a one-stage Interior Board of Land Appeals ("IBLA") administrative appeal process, that were designed to solve the problems the Subcommittee had identified in the then current appeals process. The Subcommittee recommended that:

1. MMS resolve all fundamental policy questions before it (or delegated states or Indian tribes) issues a demand or order
2. DOI encourage the resolution of disputes prior to completing the formal administrative appeals process
3. DOI clarify the standing of Indian lessors and "states concerned" with respect to the administrative appeals process
4. DOI change the structure of the administrative appeals process, so that appeals of MMS, state or tribal orders are taken directly to the IBLA, under a special set of rules applicable to royalty appeals. The rules would specify some differences for appeals involving Indian leases and coal and other solid minerals leases, because the provisions of Federal Oil and Gas Royalty Simplification and Fairness Act ("FOGRSFA") do not apply to these categories of leases
5. Each demand or order contain a clear and complete statement of the facts, law and agency policy decisions upon which the demand is based
6. The contents of the administrative record be identified early in the process and prior to the filing of formal briefs with the IBLA

By letter dated September 22, 1997, Secretary Babbitt informed the RPC that he largely agreed with the report's recommendations.

On May 13, 1999, the MMS promulgated a final rule to amend its regulations to comply with FOGRSFA appeal requirements and stated that further regulatory revisions were still under consideration. (64 Fed. Reg. 26240)

By Memorandum dated June 1, 2000, to the MMS Director, Secretary Babbitt stated that contrary to the RPC's recommendation, he had decided to retain the current two-tier appeals procedure. Secretary Babbitt conveyed the same position and decision to the RPC by letter dated August 11, 2000.

By Letter dated November 12, 2000, the MMS Director informed the Chairman of the Appeals and ADR Subcommittee that the MMS will not meet with the Subcommittee prior to proposing further appeal procedure rules.

Ms. Elizabeth Montgomery  
March 26, 2001  
Page 3 of 3

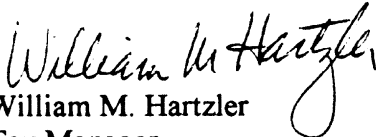
It is understood that the DOI intends to propose new appeal procedure rules before the current Administration leaves office.

RAG believes that Secretary Babbitt's decisions to continue the two-stage MMS appeal process and not to incorporate the RPC's recommendations into the appeals process should be reconsidered by Secretary Norton. The MMS is the only DOI agency with an intermediate appeal to the Director of the agency. All other DOI agency appeals are directly to the IBLA.

RAG encourages Secretary Norton and DOI to amend the current appeal rules to incorporate the RPC's recommendations and to involve the Subcommittee in the process to amend the appeals process.

RAG appreciates the opportunity to respond regarding the applicability of the current rules. Please call me at (303) 749-8445 if you have any questions.

Sincerely,

  
William M. Hartzler  
Tax Manager

Cc C. C. Bromley  
B. E. McGee, Jackson & Kelly  
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F. J. Wood